

# DECLARATION OF EMERGENCY

## Department of Wildlife and Fisheries Office of Fisheries

### Southern Flounder Commercial Harvest

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act; R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons; and R.S. 56:325.4 which provides that the secretary of the department must declare a closed season when it is determined that the spawning potential ratio of flounder is below 30 percent; and R.S. 56:317 which allows the secretary to close a fishing season or restrict fishing in the closed season in any manner deemed advisable upon securing evidence that the fish in state waters have been depleted through overfishing or that fishing is detrimental to the interest of the state, the secretary of the Department of Wildlife and Fisheries found that an imminent peril to the public welfare existed and adopted by emergency rule a statewide closure of the commercial harvest and possession of southern flounder (*Paralichthys lethostigma*) from May 1, 1996 until May 1, 1997.

However, the secretary has determined since the promulgation of the above declaration of emergency that the closure should be modified to allow persons aboard vessels which contain legal commercial fishing gear, other than strike nets, to possess and sell up to the daily possession limit of 10 southern flounder (*Paralichthys lethostigma*). Additionally, the closure should take into account the disposition of two classes of legally harvested commercial flounder. The secretary finds that an imminent peril to the public welfare would exist if this rule is not adopted effective May 1, 1996 concurrently with the previously referenced declaration of emergency.

1. The initial declaration of emergency did not, but should have contained a provision allowing for the possession and sale of southern flounder legally taken prior to the May 1 closure. Such a provision should be included and should take effect concurrently with the closure.

2. The initial declaration of emergency did not contain a provision to allow for the possession and sale of southern flounder legally imported into the state from other states or foreign countries. Such a provision should take effect concurrently with the closure.

3. Since the initial declaration of emergency, the Wildlife and Fisheries Commission has acted to impose a recreational daily take and possession limit of 10 fish effective May 1, 1996. This in and of itself makes the closure of the commercial fishery more enforceable and at the same time offers an opportunity for a limited commercial fishery without, in the opinion of the secretary, doing harm to the resource.

4. It is important that the provisions contained within this declaration of emergency take effect concurrently with the closure so that fishermen and department enforcement agents will not be faced with the confusion and other problems associated with enforcement of three varying sets of regulations within a 120-day period. Promulgation of these provisions concurrently with the closure will allow the closure to take effect together with those provisions which the secretary deems necessary for fairness, enforceability and biological monitoring purposes.

5. Promulgation of these provisions will mean that biological data as well as data on the commercial fishermen harvesting southern flounder will be continuously available from the limited commercial fishery. Fishery dependent and fishery independent data sources are essential to understanding the status of flounder fishery stocks and to identify causes of changes in stock abundances.

Therefore, in accordance with R.S. 49:953.B, 49:967, 56:317 and 56:6, the secretary does hereby promulgate this emergency rule as follows:

Other provisions of law notwithstanding, a properly licensed commercial vessel which contains legal commercial fishing gear, other than strike nets, may have on board up to a daily possession limit of 10 southern flounder (*Paralichthys lethostigma*) per person on board. A properly licensed commercial fisherman who is not on a vessel and who is using legal gear, other than strike nets, may possess up to a daily possession limit of 10 southern flounder (*Paralichthys lethostigma*). Southern flounder (*Paralichthys lethostigma*) legally possessed under this rule may be purchased, bartered, traded, exchanged or sold.

Other provisions of law notwithstanding, nothing shall prohibit the possession or sale of southern flounder (*Paralichthys lethostigma*) legally taken prior to the closure providing that all commercial dealers possessing southern flounder (*Paralichthys lethostigma*) taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.4.

Effective with this rule, in addition to all records otherwise required by law, wholesale/retail dealers shall maintain records indicating the number and poundage of southern flounder (*Paralichthys lethostigma*) for each transaction when southern flounder (*Paralichthys lethostigma*) are acquired, possessed or transferred.

Commercial dealers possessing southern flounder (*Paralichthys lethostigma*) legally imported into the state shall maintain appropriate records in accordance with other provisions of law. The effective date of this declaration of emergency shall be May 1, 1996.

James H. Jenkins, Jr.  
Secretary

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